

INDIANA DEPARTMENT OF NATURAL RESOURCES

PERMIT FOR SAND AND GRAVEL MINING

To

VULCAN CONSTRUCTION MATERIALS, LP

Permit Number: 2011-1

Facility Name: Prophetstown State Park

Permittor: Indiana Department of Natural Resources

Permittee: Vulcan Construction Materials, LP

This Permit is issued pursuant to the provisions of IC 14-35, IC 14-11-3-1, IC 4-21.5, and 312 IAC 3-1, and subject to Permittor's Request for Proposals ("RFP"), the *Original Proposal with Updated Transmittal Letter dated 11/9/10* from Permittee and found in *Exhibit A*, and the General Information and Requested Products/Services (RFP) found in *Exhibit B*. Exhibits A and B are attached hereto and incorporated herein by reference.

The purpose of the mining operation referenced in this Permit is to develop a recreational lake within Prophetstown State Park ("Premises"), for the use of its visitors to fish, boat, hike, bike, and picnic as found in Section One 1.3 of the GENERAL INFORMATION AND REQUESTED PRODUCTS/SERVICES, page 3-4.

Permittee is hereby authorized to extract, remove, and dispose of deposits of sand and gravel on or under land or nonnavigable water belonging to the state of Indiana at Prophetstown State Park ("the Project"), labeled as the "Frazier Property", under the specific conditions, as found in, but not limited to, sections 2.4, 2.5, 2.6, and 2.7 of Permittee's final transmittal and in this Permit:

Permittee shall comply with the following terms and conditions:

**A. Royalty:**

Permittee shall pay a royalty to Permittor in the amount of \$0.15/ton of sand and gravel removed and sold from the site, to be paid by the end of the month following the month the sand and gravel was removed and sold from the site. Permittee shall provide copies of the monthly report showing the number of tons sold and removed from the premises with each payment. Permittor may request additional documentation.

**B. Bonus Items:**

1. Permittee shall transfer ownership of what is currently referred to as the "Vulcan Swisher property" (84.32 acres, more or less) to the State of Indiana, no later than the earlier of the expiration of this Permit, including any renewals, or twenty (20) years from the Effective Date of this Permit.

2. Permittee shall rough grade the "Proposed Recreational Road" that surrounds the proposed mining area and as shown in Exhibit 'B', by the end of the Project. The rough grade shall be at least the approximate grade of the proposed road and in a smooth and level condition.
3. Permittee shall use its current processing and stockpile area for processing, stockpiling, and selling the mined sand and gravel for the duration of this Permit.
4. Permittee shall contribute \$100,000 (one hundred thousand dollars) toward the relocation of the Duke Energy and Tipmont power lines if permission to relocate is secured from Duke Energy and Tipmont, as applicable. The power lines to be relocated are: the Duke Energy and Tipmont lines north of Swisher Road, the Duke Energy lines south of Swisher Road and currently located on the "Frazier Property", and the Tipmont lines perpendicular to the Duke Energy lines and running east along Swisher Road. Permittee shall coordinate its operations with Duke Energy and Tipmont to manage the relocation of the power lines. As the power line relocation will provide Permittee with an additional mining area, Permittee shall also pay the \$0.15/ton royalty to Permittor for the extra tons of sand and gravel mined from this additional area.

Permittee shall contribute \$100,000 toward the purchase price of what is currently known as "the Irvin Property", if the Permittor chooses to purchase the Irvin Property, on the condition that Permittee will be able to mine the reserves connecting the "Irvin" and "Frazier Property". The \$0.15/ton royalty would apply to the extra tons mined due to the acquisition.

**C. Usability:**

1. Permittee shall mine the "Frazier Property" in a manner that results in a lake in the shape of the "Proposed Lake Configuration" reflected in Exhibit 'A', paragraph 2.6 (A) and with a lake surface area of approximately 66 acres. However, if the above referenced Duke Energy power line cannot be relocated, then Permittee shall mine the "Frazier Property" in a manner that results in a lake in the shape of the "Optional Lake Configuration", consisting of approximately 55.6 acres and as depicted in Exhibit 'A', paragraph 2.6(B).
2. Permittee's proposal is based on Permittor's and Permittee's well data, which is referenced in Attachment A of Exhibit B. It is understood that if actual conditions prove significantly different from the well data, the final lake design may require adjustment and at no cost to Permittor. Permittee shall cooperate in good faith with Permittor to complete a mutually agreeable lake design above and below the water line.
3. During the term of this Permit, Permittee may not interrupt or cause any interruption of public access into Prophetstown State Park via Swisher Road. It is understood that Permittee may not conduct any mining activity through Swisher Road until Swisher Road has been legally vacated, Permittee has completed the grading of the Proposed Recreational Road, and Permittee has received authorization from Permittor.

**D. Time:**

1. Permittee shall comply with all requirements in Section 1.4.2 of the RFP in Exhibit B.

2. Permittee shall complete a detailed design, permitting, and preparation work in time for the 2012 production season. A production season is generally considered to be April through December.

3. Pursuant to IC 14-35, this initial Permit may not exceed ten (10) years. If this permit is extended at the time of expiration, Permittee shall complete all mining activities and rough grading of the Proposed Recreational Road within 12-18 years from the Effective Date of this Permit. All grading south of the existing Swisher Road, dismantling and removal of all plant equipment, and removal of stockpiled products from the 84.32 acre property north of Swisher Road shall occur no later than one (1) year after completion of mining activities and rough grading of the Proposed Recreational Road. Rough grading includes all grading of any land within the mining area, whether disturbed or undisturbed. All grading and road development must meet Permittor's standards.

4. If the "Irvin Property" is acquired by Permittor, the Permittee shall complete all mining of sand and gravel reserves connecting the Irvin Property into the lake system within two (2) years after a new permanent Recreational Park Access Road has been completed.

**E. Payments and Bond:**

1. All payments including but not limited to the Royalty payments and Bonus payments, shall be deposited into the Natural Resources Foundation account and restricted for the use and benefit of Prophetstown State Park. Payments and supporting documentation shall be sent to: Director, Division of State Parks and Reservoirs, 402 W. Washington Street, Room W298, Indianapolis, Indiana, 46204.

2. Per the RFP, Permittee shall provide a bond to the Permittor no later than ten (10) calendar days after the issuance of the Permit and issuance shall be the date of signature by Permittor. The bond shall be made payable to the Indiana Department of Natural Resources and acquired from a surety company registered with the Indiana Department of Insurance. The bond must remain in effect for the duration of this mining Permit, including renewals, if any. Notwithstanding any other conditions of this Permit, the Permit shall not become effective until the bond is delivered to Permittor in the correct form and amount, other required documents have been received by Permittor, and Permittor has issued a Notice to Proceed to Permittee. The bond shall be in the amount of \$260,000 (two hundred sixty thousand dollars) and delivered to:

Indiana Department of Natural Resources  
Division of Engineering  
402 West Washington Street, W299  
Indianapolis, Indiana 46204

**F. General Conditions:**

1. This Permit may be revoked by Permittor for violation of any condition, limitation or applicable rule or statute.

2. If any archeological artifacts or human remains are uncovered during Project activities Permittee must stop work and report the discovery to the Indiana Division of Historic Preservation and Archacology within two (2) business days.
3. This permit does not relieve the Permittee of any liability for the effects which the Project may have upon the safety of the life or property of others.
4. This Permit is not a waiver of any local ordinance or other state or federal law or regulation. This Permit does not relieve the Permittee of obtaining additional permits or approvals as required by other federal, state, or local regulatory agencies.
5. This Permit is not assignable or transferable without the prior written approval of the Permittor.
6. The Permittor shall have the right to enter upon the Project site for any lawful purpose. Permittor will notify Permittee of its on-site presence and will comply with the safety rules under OSHA and those safety rules that are normal and customary in the industry.
7. Permittee shall keep accurate and complete records of its use of and work on the premises and shall permit Permittor or its agents, officers, or employees to inspect and copy such records, including but not limited to sales information and load tickets, at reasonable times and without delay.
8. The Permittee agrees to indemnify, defend, and hold harmless the State of Indiana , its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Permittee and/or its subcontractors, if any, in the performance of this Permit.
9. The Permittee shall secure and keep in force during the term of this Permit the following insurance coverage, covering the Permittee for any and all claims of any nature which may in any manner arise out of or result from Permittee's performance under this Permit: Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State of Indiana is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Permit. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The insurer must have a certificate of authority issued by the Indiana Department of Insurance. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Permittee. The insurance required by this Permit, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the Permittee. Failure to provide insurance as required in this Permit may be deemed a material breach of contract entitling the State of Indiana to immediately terminate this Permit. The Permittee shall furnish a certificate of insurance and all endorsements to the Permittor before the commencement of mining activities under this Permit.

10. Term and Effective Date. Notwithstanding any other provision or condition in this Permit, pursuant to IC 14-35-1-9(a), the initial term of this permit is ten (10) years from the effective date of this Permit and the effective date of this Permit shall be the date of the Notice to Proceed issued by the Permittor.

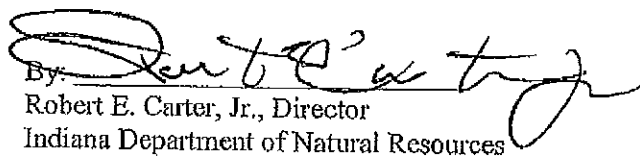
11. The receipt and acceptance of this Permit by the Permittee shall be considered as acceptance of the conditions and limitations stated in this Permit.

**G. Appeal:**

1. This signed document constitutes the issuance of a permit by the Department of Natural Resources, subject to the conditions and limitations stated on the pages entitled "INDIANA DEPARTMENT OF NATURAL RESOURCES - PERMIT FOR MINING". The permit or any of the conditions or limitations which it contains may be appealed by applying for administrative review. Such review is governed by the Administrative Orders and Procedures Act, IC 4-21.5, and the Department's rules pertaining to adjudicative proceedings, 312 IAC 3-1. In order to obtain a review, a written petition must be filed with the Division of Hearings within 18 days of the mailing date of this notice. The petition should be addressed to:

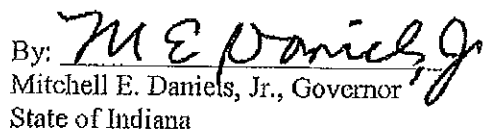
Natural Resources Commission  
Director-Hearings  
Indiana Government Center North, Room N501  
100 N. Senate Ave.  
Indianapolis, IN 46204

**Permittor:**

By:   
Robert E. Carter, Jr., Director  
Indiana Department of Natural Resources

Date: 9/12/2011

**Approved:**

By:   
Mitchell E. Daniels, Jr., Governor  
State of Indiana

Date: 9/12/2011